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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,804	08/09/2001	Christopher M. Black	1251.01.1	2556

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EXAMINER


RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No.		Applicant(s)		
	09/924,804		BLACK ET AL.		
	Examiner		Art Unit		
	Dennis Ruhl		3629		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's amendment of 12/6/04 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. Claims 1,3, and 8 are objected to because of the following informalities: The examiner objects to the referring to an element by claim number and paragraph number (i.e. said means f(ii) in claim 1, and said means 8(ii) of claim 8). It would be much clearer if applicant were to simply use the language set forth for each means recitation (i.e. for claim 8, "said means for applying"). Applicant is requested to change these recitations to words and not use numbers and letters for refer to previously recited elements. Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, portion f(iii) is considered indefinite. The portion that reads "selectable including either said server ranking of means f(ii), rotation, or a random function" is considered indefinite. This simply does not make any sense and it is not clear what this portion of the claim defines.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (6134534).

For claims 1,7,8,9,10, Walker discloses a system that is capable of performing as claimed and does what applicant has claimed. Walker discloses a remote client computer 110, a remote service provider computer 300, and a host computer/server 100,200. All three computers are capable of operating as claimed. The host server has means to acquire data, format data, and form a reservation record, etc., as claimed. Walker discloses that the system of their invention is programmed with software to perform various commands and steps. Walker discloses software that selects a service provider as claimed. Walker discloses a 2nd data structure (service providers) 700, means to apply client criteria (see column 5, lines 21-36), and means to apply host server criteria (see column 19, line 62 to col.20, line 14). Walker discloses a means to resolve ties between providers (see col. 20, ln 25-40). Walker discloses a means to advise a selected provider of their selection and to obtain confirmation of acceptance (see col. 20, ln 15-24). In column 21, ln 18-23 Walker discloses a means to reiterate use of the software program if no result is found upon initial running of the query. Walker discloses that the accepted reservations are entered into a 3rd data structure (booking of the reservation and "PNR", see col. 20, ln 41-51). Walker advises the client

of the result of their bid and tells them the accepted providers as claimed. Applicant should take notice that with respect to the limitations directed to the system being a "ground transportation system" and the limitations directed to client criteria being vehicle type, vehicle availability, etc.. this is considered to be non-functional descriptive material and does not serve as a limitation (*In re Gulack*, 217 USPQ 401 (CAFC 1983)).

The system of Walker operates as claimed and the fact that Walker deals with cruises and airlines as opposed to "ground transportation" does not render the currently pending system claims patentable in view of Walker.

For claim 2, Walker inherently discloses a graphical user interface. The examiner comes to this conclusion because in view of col. 7, lines 53-63 it is clear that to be able to use a personal computer you must have some sort of graphical user interface that allows the user to see results, etc.. A graphical user interface (LCD monitor, flat screen, or even a tape readout of numbers from a printer) would inherently be found in the personal computer described by Walker in column 7.

For claim 3, the customer database of Walker satisfies what is claimed. Applicant is reminded that the specific type of data and what variable the data represents is considered to be non-functional descriptive material and does not serve to distinguish over Walker.

For claims 4,7, applicant is reciting how data transfer occurs (a method step) but has failed to recite anything further structurally to the system. The system of Walker is fully capable of transferring data as claimed and satisfies what is claimed.

For claim 5, Walker discloses a system that satisfies what is claimed. Walker discloses that the client computer 110 can be that of a travel agent that has dedicated database systems (i.e. Apollo, Sabre, etc.). By reciting that the user computer is a travel Legacy system, this is still more or less reciting a computer and an associated database, which is satisfied by Apollo, Sabre, etc. The type of data the system stores is again considered to be non-functional descriptive material so there is no difference between claiming an Apollo system versus a Legacy system.

For claim 6, see column 9, lines 6-18 where the claimed limitation is disclosed.

For claim 11, the system of Walker allows a client to input desired search criteria remotely from their computer that the software will use during search execution.

6. Applicant's arguments filed 12/6/04 have been fully considered but they are not persuasive.

With respect to the prior art rejection in view of Walker, the arguments are non-persuasive. Applicant has argued that the examiner must give patentable weight to the recitations to data type (client criteria types that represent ground transportation) because the data has a clear and meaningful functional relationship with the system itself. All of the commentary regarding an alleged functional relationship has not set forth any relationship between the data that the system handles and the system itself. The argument that the system "provides for direct human interaction between the chauffeurs drivers and passengers" is not persuasive and does not amount to a functional relationship between the data and the system itself. Applicant is arguing that

because the claimed system is "for ground transportation" that this defines over Walker (that is directed to transportation like airlines and cruises). This is not persuasive and is more or less arguing that the type of data the system handles (ground transportation data as opposed to airline or cruise data) renders the system patentable, which is not persuasive. Applicant has stated that "the ground transportation system allows consumers to make "on the fly" decisions about destinations, something clearly lacking in Walker". What is this lacking in Walker? Anybody using Walker can make an "on the fly" decision as far as the examiner is concerned. Applicant has essentially argued that the recitations directed to non-functional descriptive material in the claims renders the claims patentable, and the examiner strongly disagrees with this position. The rejection is deemed proper.

With respect to claim 2, a graphical user interface is in Walker as the examiner has stated in the rejection. Any computer monitor satisfies the term "graphical user interface". This term is very broad and reads on any kind of computer monitor, even ones that may only display text (text is graphical). The argument is non-persuasive.

For claims 3,4,7, the examiner has read applicant's comments but there is no argument for these claims, only commentary on what is disclosed and claimed. The rejection is proper.

For claim 5, applicant argues that Walker does not disclose a client computer because the examiner has mistakenly called the computer 110, and 110 is the customer. The examiner previously referred applicant to column 7, lines 53-63 in reference to the client computer and graphical user. How can the customer use the

interface

DR
2/23/05

system of Walker online with no computer? A computer is clearly disclosed in Walker. Also, if applicant is arguing that the monitor of the computer disclosed in Walker does not satisfy claim 2 (graphical user interface), how can applicant also argue that there is no computer? This argument is non-persuasive.

For claim 6, applicant is again arguing that the non-functional descriptive material (types of data) renders the claims patentable. This is non-persuasive for reasons already set forth by the examiner (see the first paragraph of this section).

For claim 11, the examiner feels that a statement by applicant summarizes the issue at hand very well. Applicant has stated that "*the search criteria are of a different nature that the claimed invention*" and "*the claimed invention bases its search criteria on ground transportation systems*". This is arguing that the type of data the system uses renders the system patentable, which is non-persuasive. Walker is intended to be used for airline and cruises, where the same method steps occur as are claimed, so why does the fact that the instant invention is *for ground transportation* define over an air and water transportation system such as Walker. Walker operates exactly as claimed and has all of the claimed structural components, with the only difference being the data that is used, which is non-functional descriptive material that does not serve as a limitation because the data is not functionally related to the system. *In re Gulack*, 217 USPQ 401 (CAFC 1983)

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL
PRIMARY EXAMINER